

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MARK P. STAFFA,

Plaintiff,

-vs-

Case No. 09-C-0998

BENJAMIN D. PROCTOR and MERI LARSEN,

Defendants.

DECISION AND ORDER

The plaintiff, Mark P. Staffa, who is incarcerated at the Waupun Correctional Institution, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. He also filed a motion for leave to proceed *in forma pauperis*. In an Order dated February 19, 2010, the plaintiff was directed to pay an initial partial filing fee of \$4.67. He was also advised that he could notify the court if he did not wish to prosecute this civil action. The plaintiff submitted both the initial partial filing fee and a letter indicating that he had not intended to file a new civil action.

On September 23, 2009, United States District Judge Lynn Adelman dismissed another case filed by the plaintiff, No. 09-C-0753. Judge Adelman found that the plaintiff's complaint in that case failed to state a claim because the plaintiff sought relief that is available only through a petition for a writ of habeas corpus. The complaint in this case was

filed on October 21, 2009. However, it was received by the United States Court of Appeals for the Seventh Circuit first, on October 19, 2009, and forwarded to this court.

A letter the plaintiff filed on December 19, 2009, in Case No. 09-C-0753, sheds light on what happened. It appears that the plaintiff tried to file a habeas action in the Seventh Circuit, but he used a § 1983 complaint form. As a result, the Seventh Circuit forwarded the complaint to this court, and a new case was opened. Because the plaintiff did not intend to file another § 1983 complaint in this court, this action will be dismissed. The court also will return the plaintiff's initial partial filing fee of \$4.67 and his subsequent partial filing fee of \$13.07, a total sum of \$17.74 to be deposited into the plaintiff's prison trust account.

IT IS THEREFORE ORDERED that this action is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that the Clerk of Court shall return the sum of \$17.74 to the plaintiff's prison trust account. No further payments shall be submitted for this case, No. 09-C-0998.

IT IS ALSO ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin, this 29th day of April, 2010.

SO ORDERED,

s/ Rudolph T. Randa

HON. RUDOLPH T. RANDA
U. S. District Judge